

REMARKS

Amendments

It is clear from applicant's specification that athletic performance is a pursuit in which a person is physically active. Claim 18 has been amended to further clarify athletic performance as an activity which increases pulse rate over baseline. Support for claim 18 and new claims 19-35 can be found in originally presented claims 2-17, throughout the specification and on page 12, line 12, for example.

Furthermore, it is abundantly clear from the specification as a whole that the ordinary meaning of "improving athletic performance" does not encompass recovering from an illness.

The Delmore et al (EP 1,033,118) Rejection under 35 U.S.C. §102

The rejection under 35 U.S.C. §102 respectfully traversed.

Delmore does not show or suggest the use of peppermint to improve athletic performance. He suggests use of nasal dilators for improved athletic performance but the claims herein require use of peppermint for this purpose. Delmore merely states that nasal dilators very generally can be formulated to contain peppermint, but in no way does the reference ever suggest peppermint is effective in improving athletic performance. (Only use of the dilators is disclosed as having this effect.) Peppermint, like many other medications generically disclosed in col. 7, can be added to the dilator of Delmore "to provide benefit to the user when inhaled". Such a — medication merely possible selection and general description does not anticipate the methods claimed herein. (In re Petering 301 F.2d 676 (C.C.P.A. 1962)). The Delmore reference provides no specific embodiment or specific statement to suggest a method of enhancing athletic performance meeting the recitations of claim 18. A mere broad generic disclosure without any specific direction as to the specific element necessary to provide anticipation is not an anticipatory disclosure. In other words, such a broad generic disclosure does not "describe" an embodiment therein in accordance with 35 U.S.C. §102 (In re Kollman et al, 201 USPQ 193 (CCPA 1979) and it does not render the claims obvious either since no motivation to use peppermint for the purpose of the claims is given. Finally, Delmore comes nowhere near inherently anticipating the claims because one following its teaching in no way would necessarily carry out the claimed method.

Thus, the 35 U.S.C. §102 rejection should be withdrawn.

The Weil (DE 3931150) Rejection under 35 U.S.C. §102

The rejection under 35 U.S.C. §102 as being anticipated by Weil (DE 3931150), is respectfully traversed.

DE 3931150 teaches a perfume composition that contains lemon oil and peppermint oil. The composition may further contain basil oil and clove oil. Among other uses, it is stated that the perfume composition is used to overcome mental and bodily fatigue. Thus, the reference is irrelevant to athletic performance as defined in the claims. This is further clear from the abstract, which describes use of the perfume composition in trains, cars, unventilated offices and building sites. These sites are not venues for normal athletic performance, as defined. The recovery from bodily fatigue Weil is making reference to bears no relationship to improving an athletic performance that increases pulse rate over baseline.

p 2 16-10

The Rejections under 35 U.S.C. §102 over Bonner

The rejection under 35 U.S.C. §102 as being unpatentable over Dr. Bonner's soaps is respectfully traversed.

Dr. Bonners Soaps and Sal Suds formulation relates to a soap made from a mixture of materials. The reference attributes many positive effects from using the soap, including creating an exhilarating chilly-tingly-cool body space and increasing "vitality and clarity". *Merriam-Webster Medical Dictionary* (2002) defines vitality as "the quality or state of being vital; the principle of life; vital force; animation; as, the vitality of eggs or vegetable seeds; the vitality of an enterprise". This effect is somewhat vague and ambiguous and certainly is not the improvement of athletic performance that increases pulse rate over baseline. The reference provides no mention of enhancing athletic performance by exposure to peppermint odorant to arrive at the method of applicant's invention.

no def

Furthermore, it has not been satisfactorily established that the website printout reflects content publicly available as of the reported date.

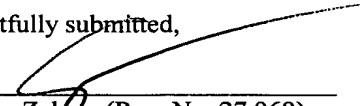
Neither Delmore, Weil nor Bonner suggest or teach the use of peppermint odorant to enhance athletic performance.

It is submitted that the claims are in condition for allowance.

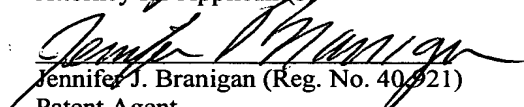
The Commissioner is hereby authorized to charge any fees associated with this response or credit any overpayment to Deposit Account No. 13-3402.

Should the Examiner have any questions or comments, he is invited to telephone the undersigned at the number below.

Respectfully submitted,



Anthony Zelano (Reg. No. 27,969)
Attorney for Applicant(s)



Jennifer J. Branigan (Reg. No. 40,921)
Patent Agent

MILLEN, WHITE, ZELANO
& BRANIGAN, P.C.
Arlington Courthouse Plaza 1, Suite 1400
2200 Clarendon Boulevard
Arlington, Virginia 22201
Telephone: (703) 243-6333
Facsimile: (703) 243-6410
Attorney Docket No.: UWHEE-1
Date: 17 September 2003